IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10586 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AHMEDABAD MUNICIPAL CORPORATION

Versus

ELLVINA SAMUALBHAI CHRISTIAN

Appearance:

MR KIRIT I PATEL for Petitioner

MR MB GANDHI for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 01/05/2001

ORAL JUDGEMENT

#. Ahmedabad Municipal Corporation, the petitioner of this petition has challenged the order of the Controlling Authority under the Payment of Gratuity Act, 1972 Annexure-'A' and also order of the Appellate Authority

Annexure-'B' dated 5-7-2000 confirming the order of the Controlling Authority.

#. The brief facts giving rise to this petition are as under :

The respondent was serving as Health Visitor in the New Chest Clinic - TB Hospital owned by the petitioner. One Dr.Deshpande was In-charge of this hospital. The employees suffering from chest disease are entitled to have certificate of the Medical Officer in-charge of Chest Clinic. One Shri Mahendra Parikh complained the Deputy Municipal Commissioner regarding demand of Rs.300=00 as illegal gratification by the respondent to have a certificate of Dr.Deshpande that the said person was suffering from Tuberculosis. A trap was arranged for the respondent and Dr.Deshpande on 18-12-1991. The trap proved successful. As a consequence thereof, the Deputy Municipal Commissioner appointed one Shri DB Dixit as Inquiry Officer. During enquiry, all the charges were established against the respondent. Enquiry report was submitted on 28-2-1994. Agreeing with the Enquiry Officer, the disciplinary authority issued show-cause notice to the respondent as to why she should not be dismissed from service. In the mean time, the respondent filed Civil Suit Nos.4267/1994 and 6563/1994 against the show cause notice.

#. The Civil Court passed an order that, the order of punishment if any passed, would not be implemented by the petitioner for 15 days from the date of service. On 8-11-1995, the respondent was dismissed from the service. Thereafter, she filed Civil Suit No.6397/1995 in the City Civil Court, Ahmedabad. Interim order was passed by the Civil Court directing the parties to maintain status quo. Under the garb of this order, the respondent continued in service till 31-5-1998 and she reached the age of superannuation. Accordingly, she retired on attaining the age of superannuation. She approached the Controlling Authority under the Payment of Gratuity Act complaining that she was not paid gratuity, despite the fact that the petitioner did not pass any order for forfeiture of gratuity. The Controlling Authority vide order dated 4-1-1999 allowed the application and directed the petitioner to pay Rs.One lakh as gratuity to the respondent. This order was modified by the Controlling Authority on 16-2-1999 by enhancing the gratuity amount to Rs.1,17,900=00 Annexure-'A' collectively.

#. Feeling aggrieved, the petitioner preferred appeal, which was heard and dismissed by the appellate authority vide Annexure-'B'. These two orders are under challenge

in this writ petition.

#. The contention of Shri MB Gandhi for the respondent has been that, since the orders of the two authorities below are nothing but findings of facts, hence, no interference under Art.227 of the Constitution of India is required. However, after going through the two impugned orders, I feel that detailed reasons have not been given for granting gratuity to the respondent. As such, the matter has to be examined afresh in the light of legal provisions contained in the Payment of Gratuity Act.

#. Shri Gandhi also contended that the plea of bar of limitation in filing appeal was raised before the appellate authority, but it was not discussed, nor any finding was given. On the other hand, only casual mention of this objection was noted in the appellate order. However, since, Shri Gandhi has not challenged the order of the appellate authority, his objection looses its significance. It also looses significance because the order of the appellate authority is in favour of the respondent.

#. Shri KI Patel, learned counsel for the petitioner has vehemently argued that no occasion arose to the petitioner to order forfeiture of gratuity because of order of status quo passed by the City Civil Court in a suit filed by the respondent. He pointed out that the said suit is still pending and direction may be issued to the City Civil Court to expedite hearing of the civil suit. Such mandamus is beyond the scope of the present petition. Consequently, no direction can be given to the City Civil Court to expedite hearing of civil suit pending before it.

#. The next contention of Shri Patel has been that, because of order to maintain status quo passed by the City Civil Court that order for forfeiture could not be passed. I am unable to agree with this submission of Shri Patel. The order to maintain status quo in a civil suit where order of termination was challenged by the respondent could not have prevented or prohibited the petitioner in passing order for forfeiture of gratuity in view of sec.4(6) of the Act. It is undisputed that so far no order has been passed that the respondent's security has been forfeited either in part or as a whole.

#. Sec.4(6) of the Payment of Gratuity Act provides as under :

"Notwithstanding anything contained in

sub-section(1),--

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to or destruction of property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee may be wholly or partially forfeited--

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment."

##. It is, thus, clear from the above provision that unless a specific order for forfeiture of gratuity either in part or in whole is passed by the employer, the employee becomes entitled to receive gratuity.

##. The order of the City Civil Court directing the parties to maintain status quo was only for a limited period, namely, the order of termination shall not be operative till a particular date, but not that, it shall not operate for all times to come. At the most, it could have operated till the decision of the suit or till the age of superannuation, whichever was earlier. In the garb of order to maintain status quo, the respondent could not be continued in service beyond the age of superannuation. She was retired on attaining the age of superannuation. As such, the pendency of civil suit in the City Civil Court or the order to maintain status quo, by no means, could have prevented the petitioner from passing the order for forfeiture of gratuity. That has not been done.

##. It is true that the petitioner was retired on attaining the age of superannuation, but that does not mean that a clean chit might have been given at the time of superannuation. The matter is still pending before the City Civil Court. The normal practise is that, on attaining the age of superannuation, the employee retires automatically and no certificate of retirement is given by the employer, nor any notice is required to be given, nor any order is required to be passed that an employee shall retire on such and such date. Consequently, the event of retirement could not have prevented the petitioner from passing an order for forfeiture of

gratuity.

##. Shri Patel has drawn my attention to sec.4 of the Act and contended that, since the respondent was not dismissed from service nor terminated from service, she is not entitled to gratuity. According to him, the respondent has not completed continuous service. However, the word 'continuous service' within the meaning of sec.4(1) of the Act means continuous service for not less than five years. There is nothing on record to show that the respondent did not complete continuous service for a period of five years.

##. The gratuity becomes payable on superannuation or on retirement or on resignation or on death of the employee or on his disablement due to accident or disease. It is difficult to interpret sec.4(1) to mean that, 'if the services of an employee have been terminated after holding departmental proceedings, he looses his or her rights to receive gratuity. If, an employee completes continuous service of five years and then he is involved in some disciplinary proceedings, it can not be said that he is not entitled to gratuity as provided under the Act and the Rules.

##. On superannuation, the petitioner could have ordered forfeiture of gratuity and this order could have been made subject to final decision of the suit pending before the City Civil Court. If, that would have been done, the apprehension in the mind of the petitioner that it might have been hauled up for committing contempt of court could not have prevailed. Since, this was not done and since no order of forfeiture, either of whole or part of the gratuity amount was passed by the petitioner, the two authorities below committed no illegality in passing the impugned orders. The impugned orders, therefore, can not be set aside. The petition, therefore, fails and is hereby dismissed. No order as to cost.

##. Shri KI Patel requests for time to file Letters Patent Appeal and for continuance of interim order. The request for continuing interim relief is declined.

May 1, 2001. [D.C. Srivastava, J.]

/sakkaf